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**MAILED**

**JAN 13 2004**

**Technology Center 2100**

In re Application of: Michael A. Epstein )  
Application No. 09/370,488 )  
Filed: August 9, 1999 )  
For: KEY EXCHANGE VIA A )  
PORTABLE REMOTE CONTROL )  
DEVICE )

**DECISION ON PETITION  
UNDER 37 C.F.R. § 1.181 TO  
WITHDRAW HOLDING OF  
ABANDONMENT**

This is a decision on the petition filed, December 22, 2003, under 37 C.F.R. § 1.181 requesting the Withdrawal of the Holding of Abandonment of the above-identified application. (See MPEP § 711.03(c)).

The petition is **GRANTED**.

The Application was abandoned for failure to file a timely response to the Office action mailed on May 7, 2003. A Notice of Abandonment was mailed December 2, 2003.

37 C.F.R. § 1.8(b) states:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence,

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate, and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

In support of the petition, Petitioner provides a copy of the originally submitted amendment and

response (5 pages) bearing a certificate of transmission by facsimile signed by Robert M. McDermott dated August 3, 2003, and a copy of an auto-reply response to the facsimile transmission from the U.S. Patent and Trademark Office acknowledging that 5 pages were received (including the cover sheet) on August 3, 2003. The auto-reply obviates the need for the personal knowledge statement of transmission as it provides proof of actual receipt.

Petitioner has established that a timely response was filed on August 3, 2003 within the 3-month shortened statutory period of response and that no extension of time fees were required for the response.

Accordingly, the petition is **GRANTED**. The Notice of Abandonment is **VACATED**.

The application file is being forwarded to the technical support staff for entry of the response. From there, the application file will be forwarded to the examiner for consideration of the response.



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